

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
In the Matter of: :  
: :  
County of Middlesex, :  
New Jersey :  
: :  
Respondent. :  
: :  
Proceeding Under Section :  
9006 of the Solid Waste :  
Disposal Act, as amended. :  
-----X

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No. RCRA-02-2014-7505

REGIONAL HEARING  
CLERK

2014 SEP -9 AM 8:18

U.S. Environmental  
Protection Agency-Reg 2

**PRELIMINARY STATEMENT**

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (collectively referred to as “RCRA” or the “Act”).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA” or “Complainant”) issued a “Complaint, Compliance Order, and Notice of Opportunity for Hearing” to County of Middlesex, New Jersey on September 30, 2014.

The Complaint alleged violations of Subtitle I of the Act and the regulations promulgated pursuant to the Act, codified in Volume 40 of the Code of Federal Regulations (“C.F.R.”) Part 280, applicable to Respondent’s Underground Storage Tanks (“UST”s).

By entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. § 22.18, the parties agree that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is County of Middlesex, New Jersey (hereinafter “Respondent” or “Middlesex”).
2. Respondent is a "person" as that term is defined Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.

3. Respondent was and continues to be an “owner” and an “operator” of multiple “underground storage tanks” (“UST”) or “UST systems” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

4. Respondent’s UST systems are or were located at:

- a) Middlesex County Highway Complex, 97 Apple Orchard Ln., North Brunswick, NJ;
- b) Johnson County Park, Johnson Dr., Piscataway, NJ;
- c) Middlesex County Area 1 Garage, 277 Bertrand Ave., Perth Amboy, NJ;
- d) Middlesex County Area 3 Garage, 750 Jernee Mill Rd., Sayerville, NJ.

5. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, authorized representatives of the EPA inspected Respondent’s eight UST systems located at the four facilities, specified above, on November 15, 18, and 19, 2013, in order to determine Respondent’s compliance with the Act and 40 C.F.R. Part 280.

6. EPA sent RCRA § 9005 Information Request Letters (hereinafter “IRLs”) to David Campion, Office of Public Property, County of Middlesex at 97 Apple Orchard Ln., North Brunswick, NJ 08902, in order to determine Middlesex’s compliance with the requirements of the Act and 40 C.F.R. Part 280 pertaining to USTs at one or more of the following facilities: Middlesex County Highway Complex, Johnson County Park, Donaldson County Park, Middlesex County Area 1 Garage, and Middlesex County Area 3 Garage. These IRLs were sent on the following dates:

- a) January 13, 2014, seeking information on USTs at “Facilities Owned/Operated by Middlesex County or affiliates” and listing all five facilities;
- b) On April 16, 2014, seeking follow-up information on USTs at “Facilities Owned/Operated by Middlesex County or affiliates” and listing all the same facilities except Donaldson County Park (which EPA had determined to be in compliance).

7. Respondent Middlesex’s responses to the aforementioned January 13, 2014 Section 9005 IRL referred to in paragraph number 6, above, were provided by mail on or about March 28, 2014. Respondent Middlesex’s responses to the aforementioned April 16, 2014 Section 9005 IRL noted in paragraph number 6, above, were provided by e-mail on or about June 9, 2014 with a “certification of answers” by e-mail on July 15, 2014.

8. After a review of Respondent’s response to the IRLs, and based on the EPA inspections of Respondent’s facilities, EPA determined that the UST systems at the facilities specified in paragraph 4, above, were not in compliance with 40 C.F.R. § 280.44(a) and 40 C.F.R. §§ 280.34(b), 34(c), and 45(b). Specifically, between November 18, 2012 and June 9, 2014, the following failures were detected for Middlesex County Highway Complex, failure to conduct an annual test of the operation of the automatic line leak detectors for pressurized piping for UST systems and failure to maintain records of release detection for underground piping, for Johnson County Park, failure to maintain records of release detection,



for Middlesex County Area 1 Garage, failure to maintain records of release detection, and for Middlesex County Area 3 Garage, failure to conduct an annual test of the operation of the automatic line leak detectors for pressurized piping for UST systems, and failure to maintain records of release detection for pressurized piping.

9. The parties have agreed to resolve this matter as herein provided.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional basis of this action; (b) admits the Findings of Fact and Conclusions of Law, above; (c) consents to the conditions specified in the Consent Agreement; and (d) consents to the issuance of the Final Order.

2. **Middlesex County Highway Complex, 97 Apple Orchard Lane, North Brunswick, NJ:** Beginning immediately Respondent will comply with the recordkeeping requirements of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45 for the one pressurized line and two suction lines at this facility. Respondent will also ensure that it conducts a timely ALLD test in accordance with 40 C.F.R. § 280.44(a), will submit to EPA the results of the next such test within 30 days of receiving the results, and will conduct an annual ALLD test each year (defined as no later than 365 days after performance of the prior test) thereafter.

3. **Johnson County Park, Johnson Drive, Piscataway, NJ:** Beginning immediately Respondent will comply with the recordkeeping requirements of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45 for the one underground storage tank at this facility.

4. **Middlesex County Area 1 Garage, 277 Bertrand Ave., Perth Amboy, NJ:** Beginning immediately Respondent will comply with the recordkeeping requirements of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45 for the two underground storage tanks at this facility.

5. **Middlesex County Area 3 Garage, 750 Jernee Mill Road, Sayerville, NJ:** Beginning immediately Respondent will comply with the recordkeeping requirements of 40 C.F.R. §§ 280.34(b), 280.34(c) and 280.45 for the two pressurized lines at this facility. Respondent will also ensure that it conducts a timely ALLD test in accordance with 40 C.F.R. § 280.44(a), will submit to EPA the results of the next such test within 30 days of receiving the results, and will conduct an annual ALLD test each year (defined as no later than 365 days after performance of the prior test) thereafter.

6. Respondent will maintain compliance with all applicable requirements of 40 C.F.R. Part 280 for each federally regulated UST system at any of its facilities where it is an owner and/or operator of an UST system.

7. In submitting the ALLD test results as required in Paragraphs 2 and 5 above, Respondent will include the following certification:

I certify that the information contained in this submittal is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant potential penalties for submitting false, misleading and/or incomplete information, and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

These ALLD test results and any other submission by Respondent should be sent to:

**Dennis McChesney, Ph.D., Team Leader**  
**UST Team**  
**Division of Enforcement and Compliance Assistance**  
**U.S. Environmental Protection Agency - Region 2**  
**290 Broadway, 20<sup>th</sup> Floor**  
**New York, NY 10007-1866**

8. Respondent shall pay a civil penalty to EPA in the total amount of **Fifty-one Thousand One Hundred Dollars (\$51,100)**. Payment of the civil penalty shall be made by cashier's or certified check or by Electronic Funds Transfer ("EFT"). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America**" and shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO. 63197-9000

The check shall be identified with a notation thereon listing **In the Matter of County of Middlesex, New Jersey, Docket No. RCRA-02-2014-7505**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.



- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **In the Matter of County of Middlesex, New Jersey**
- 7) Case Number: **RCRA-02-2014-7505**

Whether the payment is made by check or EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Carl R. Howard  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866  
Attn: Karen Maples

- a. The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the "due date").
  - b. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.
  - c. Further, if timely payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
  - d. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.
9. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

10. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (upon full compliance with the terms of this CAFO, including, but not limited to paragraphs 2 - 7, above, and full payment of the civil penalty) the civil and administrative claims alleged in the Complaint. However, nothing herein shall be read to preclude EPA or the United States from pursuing appropriate penalties, injunctive or other equitable relief or criminal sanctions for any violations of law.

11. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of settlement are set forth herein.

12. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

13. By executing this Consent Agreement, Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

14. By executing this Consent Agreement, Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

15. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding except in one to enforce or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

16. The undersigned signatory to this Consent Agreement for the Respondent certifies that he is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

17. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and any successor entity that may assume the Respondent's obligations.

18. Each party hereto agrees to bear its own costs and fees in this matter.

19. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

20. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.



**In the Matter of County of Middlesex, New Jersey  
Docket No. RCRA-02-2014-7505**

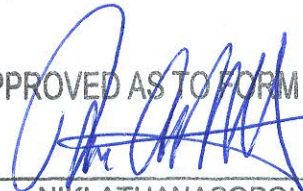
**RESPONDENT: County of Middlesex, New Jersey**

BY: 

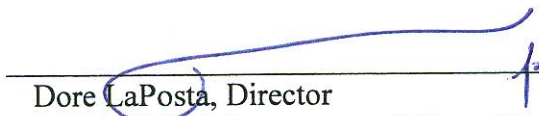
Name (print): **RONALD G. RIOS, DIRECTOR  
BOARD OF CHOSEN FREEHOLDERS**

Title: \_\_\_\_\_

Date: 8-26-15

  
APPROVED AS TO FORM AND LEGALITY  
\_\_\_\_\_  
NIKI ATHANASOPOULOS, ESQ.  
SENIOR DEPUTY COUNTY COUNSEL

**COMPLAINANT: U.S. Environmental Protection Agency, Region 2**

BY:  for PATRICK DUNN  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: SEPTEMBER 3, 2015

**In the Matter of County of Middlesex, New Jersey**  
**Docket No. RCRA-02-2014-7505**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The Effective Date of this Order shall be the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY:   
Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 9/3/15



**In the Matter of County of Middlesex, New Jersey  
Docket No. RCRA-02-2014-7505**

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.  
U.S. EPA- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Benjamin D. Leibowitz,  
Senior Deputy County Counsel  
Middlesex County Administration Building  
75 Bayard Street, Room 230  
New Brunswick, NJ 08901

Dated: 9/8/15  
New York, New York

  
\_\_\_\_\_